S.B.Civil Writ Petition NO.2320/2004

Thakur Kishan Singh
vs
Municipal Board,Jaisalmer & Ors.

DATE OF ORDER : - 8.2.2005

REPORTABLE

HON'BLE MR. PRAKASH TATIA,J.

Mr. J.P.Joshi, for the petitioner.
Mr. R.K.Soni]
Mr. I.C.Maloo], for the respondents.

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Heard learned counsel for the parties. The controversy is short.

Brief facts of the case are that according to petitioner the property in question was belonging to late Sh.Govardhan Singh, the father of the petitioner and the respondent no.3. Sh.Govardhan Singh made a family arrangement and for that purpose a registered deed was executed, which is dated 13.1.57. By this family arrangement, some properties were given to the petitioner's and respondent no.3's mother Smt. Anand Kanwar and certain properties were given to the petitioner. The petitioner placed on record the copy of the family arrangement dated 13.1.57. Sh.Govardhan Singh died before the death of Smt. Anand Kanwar. Smt. Anand Kanwar died on 23rd Oct., 2001. The respondent no.3 claimed that before the death of Smt. Anand Kanwar she executed a Will on 3rd March, 2001 and by virtue of said Will, the respondent no.3 became the owner of the property in dispute.

It appears from the facts of the case that respondent no.3 applied for entry of her name in place of name of Smt. Anand Kanwar, her mother before the Municipal Board, Jaisalmer for properties covered by the Will. The Municipal Board on receipt of the said application, issued notice inviting objections, if any, against the claim of the respondent no.3 on the basis of Will dated 3rd March, 2001. According to petitioner, the petitioner submitted objection and informed the authorities that Will is forged one. According to petitioner despite petitioner's objection, the Municipal Board, Jaisalmer without considering petitioner's application passed the order in favour of the respondent no.3 on 27.2.2004, copy of which is placed on record as Annex.2.

According to learned counsel for the petitioner, the order dated 27.2.2004 is non-speaking order as it contains no reasons. It is also submitted that the petitioner's objections were never considered and, therefore, they were not rejected by the Municipal Board before passing the order dated 27.2.2004. It is also submitted that the Municipal Board has no right to decide the right, title or interest in the property. It is also submitted that the Municipal Board should have left it open for the parties to get their right and title decided from the civil court before entering the name of any of the party in the record of the Municipal Board.

Learned counsel for the respondent no.3 vehemently submitted that the order dated 27.2.2004 is not effecting any right, title or interest in the property of the petitioner if she has any right, title or interest in the property. According to learned counsel for the respondent no.3, the petitioner has no right, title on interest in the property as the Will has been executed by the deceased Anand Kanwar in favour of the petitioner. It is also pointed out that in certain litigations, the petitioner tried to get herself impleaded as party claiming the Will to be forged one. Therefore, the Municipal Board if after receipt of the application of the respondent no.3 issued public notice and, thereafter, when no objection was filed, entered the name of the respondent no.3 by specifically mentioning that by this order, no title is declared to be proved, the Municipal Board has not committed any illegality. Learned counsel for the respondent no.3 further submits that the petitioner could have applied for entry of her name, but she did not submit any application before the Municipal Board, therefore, she cannot raise any objection against the entry of the name of the respondent no.3 in the Municipal Board's record.

I considered the submissions of learned counsel for the parties. It is clear from Section 121 of the Rajasthan Municipalities Act, 1959 that in the event of title of any person, who was primarily liable for the Municipal tax and he died subsequently then the heirs or the person

claiming otherwise can give notice of such transfer to the Board. It appears that the provision has been made so that the Municipal Board may keep their record up-dated so that in case any proceedings are initiated in relation to any immovable property, particularly, for the purpose of levy and collection of tax, proper notice may be served upon the proper person. In the entire Municipal Act, there is no provision authorizing Municipal authorities to decide the disputed questions of fact about the title to the property of private persons as it is within the exclusive jurisdiction of the civil court. It appears from the scheme of the Act that the persons,who claims themselves to be the successor in interest either by transfer as per sub-section (1) of Section 121 or by devolution of interest due to the death as per sub-section (2) of Section 121 of the Act of 1959 may inform the Municipal Authorities. The Municipal Board may enter name of successor in their record where there is no dispute.

It is true that by order dated 27.2.2004, the Municipal Board has not decided the title to the property of any of the party and this has been made clear by specifically mentioning in the order itself, but at the same time, even a entry in a public record should be correctly entered so that the wrong entry itself may not provoke a person to claim rights, which he does not possess. Therefore, it is the duty of the Municipal Authorities to make corrections in their record relating to

private persons' property after due notice to the persons, who may have right, title or interest in the property and in case where the persons are known who may claim devolution of interest by natural succession then the requirement of giving opportunity of hearing to those person is all the more necessary. When persons come with a case claiming title through a Will, Gift or any document, which disentitle the persons, who could have claimed right,title or interest in the property by natural succession then such matters should be examined after giving opportunity to all natural heir of the executant of the Will and in case of gift or otherwise, then to executant of such document. In case, there appears to be dispute about the devolution of interest, a note may be appended in the record of the Municipal Board entering name of the claimants with their basis of claim. Since the Municipal Authorities have no right or jurisdiction to decide about the title of the property, therefore, they cannot either accept or reject the claim of any of the parties till it is decided by competent court of law and, therefore, also, it would be just and proper to record the name of all the parties, who are claiming their right, title or interest in the property subject to the decision by the competent court of jurisdiction so that the interest of the Board may be saved as the Board may recover its tax and other dues, recoverable under law, from the persons, who are claiming their right or title in the property, on the basis of their admission of title to the property of the deceased.

However, it is also necessary to caution that the above procedure should not be used by the Municipal Board or the local authorities to compel the parties to litigate, who have no dispute between them and who voluntarily and unitedly put-forward or admit claim of any of or one of the successor in interest. This is because of the fact that by agreement the parties may admit title of one of the party, may admit due execution of the Will in favour of the party and may admit due execution of any deed on the basis of which the parties are claiming their right. In such circumstances, the Municipal Board may pass appropriate order. However, that order itself may not be the proof of the title to the property of any of the party, but that may be used as a piece of evidence, which may be considered by the civil court on the basis of the legality, validity and genuineness of the fact mentioned in the order.

Assuming for the sake of arguments that the petitioner did not submit any application under Section 121 of the Rajasthan Municipalities Act even then the petitioner's right to move application under sub-section (2) of Section 121 of the Act is not a lost right. It is not in dispute that no notice was personally served upon the petitioner before entering the name of the respondent no.3 by the Municipal Board. In the matter of request for making entry of the name by excluding the name of the person, who is natural successor then all

endeavour should be made to serve the notice upon the natural successor to the property. In this case that has not been done. The petitioner's contention is that she submitted an objection against the claim of the respondent no.3 before the Municipal Board. If it is so, then that is nothing but an application under Section 121 for enabling the Municipal Board to make correct entry in their record about the particulars of the person to whom notice may be given or against whom notice may be issued for any proceedings under the Municipal Act. It is also relevant to mention here that in the public record, the entry should be correctly made. No one can claim that since the authorities have not decided the title in the property or even the right in the property, therefore, the wrong entry can be continued. It is not expected that a rightful owner may be denied entry of his name in the public record merely because of this reason that the authority has not decided the title or rights of the parties. These disputes can be avoided in case proper orders are passed by the local authorities before making correction in their record so that parties may also come to know that where they stand, which may avoid even the litigations in future.

All above has been observed so that the Municipal Board and the local authority who have no power to decide right, title or interest in the property may not give birth to disputes by entering name of only those person alone whose claim to property is in dispute by other on the

basis of valid grounds and the record of the local authorities should be correct, up-dated and before correction the proper notice be served upon the parties.

In view of the above, the writ petition of the petitioner is partly allowed and the petitioner may now submit an application under sub-section (2) of Section 121 of the Rajasthan Municipalities Act, 1959 and the Municipal Board may after hearing the petitioner and the respondent no.3 may pass a fresh order uninfluenced by the order, which was passed on 27.2.2004 (Annex.9) recording the name of the respondent no.3 alone. The application may be submitted within a period of 15 days from today and may be decided by the authorities within a period of one month thereafter.

(Prakash Tatia), J.

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